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COMPENSATION FOR RAPE VICTIMS UNDER INDIAN CRIMINAL JUSTICE SYSTEM: AN ANALYTICAL STUDY

Dr. P.K. Pandey*

All the States and Union Territories shall make all endeavors to formulate a uniform scheme for providing victim compensation in respect of rape/sexual exploitation with the physically handicapped women.

-Supreme Court of India¹

Abstract

In every society it has been expected that every individual has to live with peace without disturbing the others and has to come forward to help the others at the time of need which is the basis of social solidarity. But, such situation does not arise always and when any individual's rights are violated or being disturbed anyway by the others, it is expected that the State shall come forward to protect the individual's interests and rights which is in line with the concept of social contract theory. The person against whom any wrong or offence has been committed, he, being aggrieved by the acts of others, brings the law in motion by informing to the police or the courts established under the criminal justice system. The purpose of criminal justice system is not only to bring discipline, peace and harmony in the society rather it gives opportunity to erring individual to reform himself in addition to the protecting the victim's interests also though the traditional approach of the criminal justice system during British period in India was confined to the simple object of ascertaining guilt or innocence, awarding punishment and the victim was treated as a weeping beggar at the door of criminal justice system. But, this approach has changed and now it is fully accepted that the victim of an offence should be central and active participant in the criminal justice system which in turn will reduce victim's anxiety, fear and anger. The present paper unearths the provisions relating to compensation for rape victims under Indian criminal justice system with the help of statutory provisions and decided leading case laws in addition to the committees' recommendations.

I Understanding Victim Compensation

As the term 'victim compensation' is combination of victim and compensation hence it is prudent to see the meaning of these both terms. The term victim is defined as a 'person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and it includes his guardian or legal heir'.²

The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 defines 'victim' as a persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.³

Further, it mentions that a person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted, or convicted

*Assistant Professor, Centre for Juridical Studies, Dibrugarh University Dibrugarh, Assam.

¹Tekan alias Tekram v. State of Madhya Pradesh, Criminal Appeal No. 884 of 2015 decided on February 11, 2016.

²Section 2(wa) of the Code of Criminal Procedure, 1973

³Article 1

and regardless of the familial relationship between the perpetrator and the victim. The term 'victim' also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.⁴

The 'compensation' is monetary amount awarded to someone to reduce the adverse effects of loss, suffering or injury. 'Victim compensation refers to payments made by the government to victims of crime'⁵ or victim compensation is victim oriented and designed to provide reimbursement to victims of selected classes of crime.⁶

Thus, the term 'victim compensation' is used for compensating financially to a person against whom, including his guardian or legal heir, any offence has been committed or attempted. Hon'ble Punjab and Haryana High Court in *M/s. Tata Steel Ltd. v. M/s. Atma Tube Products Ltd. & others*⁷, held that only those dependents of a deceased victim who have suffered loss or injury as a result of the crime and require rehabilitation, are eligible to seek compensation as per the Scheme formulated under Section 357-A of the Code of Criminal Procedure.

The objective behind providing compensation to the victims is to rehabilitate them but it has to be noted that providing compensation is not intended to restore the loss what has taken place due to concerned offence. Justice M.Y. Eqbal in *Tekan alias Tekram v. State of Madhya Pradesh*⁸, observed that indisputably, no amount of money can restore the dignity and confidence that the accused took away from the victim. No amount of money can erase the trauma and grief the victim suffers. This aid can be crucial with aftermath of crime.

II International Perspective

The awarding of compensation for criminal injuries is not a creation of recent times. Compensation was recoverable under Roman, Jewish, Greek and Babylonian law, although certainty of recovery was dependent upon the strength of clan or kin to enforce compensation.⁹ But, at the international level, in modern sense, the victim's right to compensation was recognized in 1985 with adoption of two important documents urging the international community to strengthen the status of victims of offences. The first one is the *United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985*¹⁰ which calls upon Member States to take the necessary steps to give effect to the provisions contained in the Declaration and, in order to curtail victimization as referred to hereinafter, endeavor:

(a) To implement social, health, including mental health, educational, economic and specific crime prevention policies to reduce victimization and encourage assistance to victims in distress

⁴Article 2

⁵Burt Galaway and Leonard Rutman, "Victim Compensation: An Analysis of Substantive Issues", Vol. 48, No. 1, 1974 *Social Service Review* 60-74 at 60

⁶Burt Galaway, "Differences in Victim Compensation and Restitution", Vol. 24, No. 1, 1979 *Social Work* 57-58 at 57

⁷CRM-790-MA-2010 (O&M) decided on March 18, 2013

⁸Criminal Appeal No. 884 of 2015 decided on February 11, 2016

⁹Iyla Therese Davies, "Compensation for Criminal Injuries in Australia: A Proposal for Change in Queensland", Vol. 3, Issue 1, 1991 *Bond Law Review* 1-24 at 1

¹⁰UN General Assembly A/RES/40/34 dtd. 29 November 1985

- (b) To promote community efforts and public participation in crime prevention
- (c) To review periodically their existing legislation and practices in order to ensure responsiveness to changing circumstances, and to enact and enforce legislation proscribing acts that violate internationally recognized norms relating to human rights, corporate conduct, and other abuses of power
- (d) To establish and strengthen the means of detecting, prosecuting and sentencing those guilty of crimes
- (e) To promote disclosure of relevant information to expose official and corporate conduct to public scrutiny, and other ways of increasing responsiveness to public concerns
- (f) To promote the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, medical, social service and military personnel, as well as the staff of economic enterprises
- (g) To prohibit practices and procedures conducive to abuse, such as secret places of detention and incommunicado detention
- (h) To co-operate with other States, through mutual judicial and administrative assistance, in such matters as the detection and pursuit of offenders, their extradition and the seizure of their assets, to be used for restitution to the victims.

This declaration recommended that, at the international and regional levels, all appropriate measures should be taken-

- (a) To promote training activities designed to foster adherence to United Nations standards and norms and to curtail possible abuses
- (b) To sponsor collaborative action-research on ways in which victimization can be reduced and victims aided, and to promote information exchanges on the most effective means of so doing
- (c) To render direct aid to requesting Governments designed to help them curtail victimization and alleviate the plight of victims
- (d) To develop ways and means of providing recourse for victims where national channels may be insufficient.

The declaration mentions that when compensation is not fully available from the offender or other sources, States should endeavor to provide financial compensation to-

- (a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes.
- (b) The family, in particular dependents of persons who have died or become physically or mentally incapacitated as a result of such victimization.¹¹

Further, it provides that the establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.¹²

¹¹Article 12

¹²Article 13

The second is the Council of Europe *Recommendation on the Position of the Victim in the Framework of Criminal Law and Procedure*¹³ which was adopted by the Committee of Ministers on June 28, 1985 which mentions that-

- (a) It must be a fundamental function of criminal justice to meet the needs and to safeguard the interests of the victim.
- (b) It is also important to enhance the confidence of the victim in criminal justice and to encourage his co-operation, especially in his capacity as a witness.
- (c) It is necessary to have more regard in the criminal justice system to the physical, psychological, material and social harm suffered by the victim, and to consider what steps are desirable to satisfy his needs in these respect.

It is evident from the above mentioned that the Declaration and Recommendation both deal with victim's interest though the language and content may differ. In 1997, the European Forum for Victim Services issued a 'Statement of Victims' Rights in the Process of Criminal Justice' which recognizes the following rights of victims to-

- * Respect and recognition at all stages of the criminal justice proceedings.
- * Receive information and explanation about the progress of their case.
- * Provide information to officials responsible for decisions relating to the offender.
- * Have legal advice available, regardless of their means.
- * Protection both for their privacy and for their physical safety.
- * Compensation both from the offender and from the State.

Next, the 'Council of Europe Committee of Ministers to Member States on Assistance to Crime Victims'¹⁴, recognizing the victim's rights, mentions that States should ensure the effective recognition of, and respect for, the rights of victims with regard to their human rights; they should, in particular, respect the security, dignity, private and family life of victims and recognize the negative effects of crime on victims.¹⁵ It further mentions that the States should adopt a compensation scheme for the victims of crimes committed on their territory, irrespective of the victim's nationality. The compensation should be granted without undue delay, at a fair and appropriate level.¹⁶

'The UN Convention on Justice and Support for Victims of Crime and Abuse of Power' is also an important instrument which recognizes the victim's rights. Thus, it can be said that at the international level, the provisions relating to victim compensation are in effect and accordingly many States¹⁷ have enacted to provide assistance in form of compensation to the victims of crimes.

¹³Recommendation No. R (85) 11

¹⁴Recommendation Rec (2006)8 Adopted by the Committee of Ministers on June 14, 2006 at the 967th Meeting of the Ministers' Deputies

¹⁵Art. 2.1

¹⁶Art. 8

¹⁷New Zealand- The New Zealand Criminal Compensation Act, 1963, Victims' Rights Act, 2002; United Kingdom- The Criminal Injuries Compensation Act, 1995; Australia- Criminal Injuries Compensation Act, 1978, Victims of Crime Act, 2001; United States of America- The Victims of Crime Act, 1984 (Federal Law).

III Indian Perspective

The concept of victim compensation in India, as a matter of right, has been implemented by Code of Criminal Procedure (Amendment) Act, 2008 but it does not mean that victims had not any place in Indian criminal justice system. In ancient India, the evolution of this concept can be traced in Manusmriti where it has been said that 'if limb is injured, a wound is caused or blood flows, the assailant shall be made to pay the expense of the cure or the whole'¹⁸ and 'he who damages the goods of another, be it intentionally or unintentionally, shall give to the owner a kind of fine equal to damage'¹⁹.

But, during medieval period there was monarchy where the King/State kept with it the right to punish and get compensation from the guilty persons and victims' role was limited. During British India, which followed the common law, the presumption of accused innocence unless he is proved guilty by a competent court advocated the accused rights and in this process the victims were wholly marginalized and their role was limited to inform the State about offence and give evidence as a witness only.

Like above, Justice A.S. Anand has said that 'the criminal justice system today is basically concerned with criminals, whether it is their conviction, treatment, reformation or rehabilitation. The purpose of criminal justice system appears, at present, to be confined to the simple object of ascertaining guilt or innocence and use the victim only as a witness.

Since, the central object of legal process is to promote and maintain public confidence in the administration of justice, therefore there is an urgent need for giving a well-defined status to the victim under the criminal law. His interest in getting the offender punished cannot be ignored or completely subordinated to the interest of the State. Otherwise, the victim will remain disconnected and may develop a tendency to take the law into his own hands in order to seek revenge. A victim of crime is, thus, a mute witness to the whole drama.'²⁰

Rajasthan High Court in *Suo Moto v. State of Rajasthan*²¹, held that the victim not only needs physical protection but also the financial, medical, psychological and social support. An attempt be made to build an atmosphere of camaraderie so that the victim gets out of the trauma both physical and mental. In other words, a congenial atmosphere is required to be created by which a victim is free to speak out without fear or any reservation. Adequate assistance is required to be extended to prepare the victim to face the legal process in the courts.

The provisions to provide compensation to the victims are well articulated under the Constitution of India in its Fundamental Rights²² and Directive Principles of State Policy²³ which form the bulwark for a new social order in which social and economic justice would blossom in the national life of the country.²⁴ Article 41 mandates, *inter alia*, that the State shall make

¹⁸Verse 287, Chapter VIII

¹⁹Verse 288, Chapter VIII

²⁰Quoted in: *Srinath Prasad v. State*, 2004 CriLJ 3635

²¹2005 (4) WLC 163

²²Part III of the Constitution of India

²³Part IV of the Constitution of India

²⁴Article 38 of the Constitution of India

effective provisions for securing the right to public assistance in case of disablement and in other cases of undeserved want.

In *Rohtash v. State of Haryana*²⁵, a Division Bench of the Punjab & Haryana High Court observed that the victims have right to get justice, to remedy the harm suffered as a result of crime. This right is different from and independent of the right to retribution, responsibility of which has been assumed by the State in a society governed by Rule of Law. But if the State fails in discharging this responsibility, the State must still provide a mechanism to ensure that the victim's right to be compensated for his injury is not ignored or defeated.

The real journey of compensatory jurisprudence in India started by the innovative decisions of the Supreme Court of India where the court interpreted the constitutional provisions in the light of justice guaranteed in the Preamble of the Constitution and in this respect the important judgements are: *Khatri v. State of Bihar*²⁶, *Rudal Shah v. State of Bihar*²⁷, *Nilabati Behera v. State of Orissa*²⁸, *Hari Krishan and State of Haryana v. Sikhbir Singh*²⁹ etc.

In *Delhi Domestic Working Women's Forum v. Union of India*³⁰, Hon'ble Supreme Court of India observed that it is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India, to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatized to continue in employment. Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

Section 357 of the Code of Criminal Procedure Act, 1973 empowers the trial court to order to pay compensation in favour of the victim but the limitation under this section is that the court can order only in case of conviction of the perpetrator of crime and it is reality that the Courts have seldom invoked it. The Law Commission of India has also said that under section 357 compensation can be given in different ways and that too only when the offender is convicted and sentenced.³¹ Not only this, the *Malimath Committee* said that the payment of compensation by the offender is not possible where there is acquittal or where the offender is not apprehended. Further, the payment remains suspended till the limitation period for the appeal expires or if an appeal is filed, till the appeal is disposed of. The delay in the realization of the amount often adds to the woes of the victim.³²

Further, the Law Commission of India also recommended to insert provisions in CrPC to provide compensation to the victims³³. *The Committee on Reforms of Criminal Justice System*³⁴,

²⁵ *Crl.A. No. 250 of 1999 decided on April 1, 2008*

²⁶ *1981 SCR (2) 408*

²⁷ *1983 SCR (3) 508*

²⁸ *1993 SCR (2) 581*

²⁹ *AIR 1998 SC 2127*

³⁰ *(1995) 1 SCC 14*

³¹ *Report No. 154 on the Code of Criminal Procedure, 1973 (1996), Law Commission of India at 61*

³² *Para 6.8.4 of the Report of the Committee on Reforms of Criminal Justice System, Vol. 1 at 81*

³³ *Report 152 on Custodial Crimes (1994), Law Commission of India at 46*

³⁴ *Ministry of Home Affairs, Government of India, 2003*

chaired by Justice V.S. Malimath, popularly known as Malimath Committee, lamented on the present condition of victims in India that 'people by and large have lost confidence in the Criminal Justice System. Victims feel ignored and are crying for attention and justice. There is need for developing a cohesive system, in which, all parts work in co-ordination to achieve the common goal.'³⁵ Some important recommendations of the Malimath Committee are as under-

* Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organized in a separate legislation by Parliament.

* The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.

Justice Verma Committee was also of the view that a right to claim compensation will lie against the State in the event the State is unable to secure safe conditions / safe spaces for women.³⁶

Accordingly, section 357 A was inserted in CrPC in 2008. This section has paved a new path to compensate the victim not only on order of discharge or acquittal rather in cases where offender is not traced. Section 357A is as under-

357A. Victim Compensation Scheme. - (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

(2) Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).

(3) If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.

(4) Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

(5) On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

(6) The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be

³⁵Vol. 1 at 75

³⁶Report of the Committee on Amendments to Criminal Law, January, 2013, Government of India at 125

made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

It is worthwhile to mention here that before incorporating section 357A in statute there were some States which had mechanism to provide compensation to the victims. For example- The State of Tamil Nadu is the first ever State in India to establish 'Victim Assistance Fund' in 1995 with the corpus of One Crore and perhaps the next State was Tripura which had made the Tripura Victim Compensation Fund Rules, 2007.

Victim Compensation Scheme- The statutory basis of the Victim Compensation Scheme is section 357A CrPC in which it is mandated to prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. In preparing the scheme, the State Governments are expected to work in co-ordination with the Central Government. Though, this section was inserted in CrPC by the Code of Criminal Procedure (Amendment) Act, 2008 which came into force on 31st December, 2009 but some State Governments took much more time in formulating schemes.

The unique thing in this respect is that though the source of preparing Victim Compensation Scheme for all States/UTs is section 357A CrPC but it is beyond understanding that why these States/UTs have incorporated different norms for providing compensation when these schemes have been prepared in coordination with Central Government?

Does it mean that when State Governments were framing schemes, there was no coordination with the Central Government? Does it not mean the Central Government was totally silent spectator? Not only this, the different States have included in their schemes different offences also in addition to different limitation period. Majority of the States have not provided compensation for rehabilitation of the victims. The following table enlists the different amount of compensation for the offence of rape under Victim Compensation Schemes-

IV Victim Compensation Schemes of Different States and the Union Territories

State/ UT	Details of Loss or Injury	Maximum Limit of Compensation(Rs.)	Limitation Period
Arunachal Pradesh ³⁷	Rape	50,000/-	1 year
	Rehabilitation	20,000/-	
Assam ³⁸	Rape	75,000/-	6 months
	Rape of Minor/Gang Rape	1,00,000/-	
Bihar ³⁹	Rape	50,000/-	6 months
Chhattisgarh ⁴⁰	Rape	25,000/-	1 year
	Rape of Minor	50,000/-	
	Rehabilitation	20,000/-	

³⁷ Arunachal Pradesh Victim Compensation Scheme, 2011

³⁸ Assam Victim Compensation Scheme, 2012

³⁹ Bihar Victim Compensation Scheme, 2011

⁴⁰ Chhattisgarh Victim Compensation Scheme, 2011

Delhi ⁴¹	Rape	5,00,000/-	3 years
	Gang Rape	7,00,000/-	
Goa ⁴²	In case of injury causing, severe mental agony to women and child (e.g. in human trafficking and rape cases, Acid cases)	10,00,000/-	180 days
Gujarat ⁴³	Rape	1,00,000/-	—
	Rehabilitation	50,000/-	
Haryana ⁴⁴	Rape	3,00,000/-	6 months
Himachal Pradesh ⁴⁵	Rape	50,000/-	90 days
Jammu & Kashmir ⁴⁶	Rape	50,000/-	6 months
	Rape of minor or rape in police custody	1,00,000/-	
Jharkhand ⁴⁷	Rape	20,000/-	6 months
	Rape of Minor	50,000/-	
Karnataka ⁴⁸	Rape other than minor	1,50,000/-	12 months
	Rape of minor	3,00,000/-	
Kerala ⁴⁹	Rape	3,00,000/-	180 days
	Rehabilitation	1,00,000/-	
Madhya Pradesh ⁵⁰	Gang rape	3,00,000/-	180 days
	Sexual crime with minors	2,00,000/-	
Maharashtra ⁵¹	No amount for the offence of rape	Nil	6 months
Manipur ⁵²	Rape	20,000/-	6 months
	Rape of Minor	30,000/-	
	Rehabilitation	20,000/-	
Mizoram ⁵³	Rape	50,000/-	6 months
Nagaland ⁵⁴	Rape	50,000/-	3 years

⁴¹ Delhi Victims Compensation Scheme, 2011 has been repealed by the Delhi Victims Compensation Scheme, 2015

⁴² Goa Victim Compensation Scheme, 2012

⁴³ Gujarat Victim Compensation Scheme, 2016

⁴⁴ Haryana Victim Compensation Scheme, 2013

⁴⁵ Himachal Pradesh (Victim of Crime) Compensation Scheme, 2012

⁴⁶ Jammu and Kashmir Victim Compensation Scheme, 2013

⁴⁷ Jharkhand Victim Compensation Scheme, 2012

⁴⁸ Karnataka Victim Compensation Scheme, 2011

⁴⁹ Kerala Victim Compensation Scheme, 2014

⁵⁰ Madhya Pradesh Crime Victim Compensation Scheme, 2015

⁵¹ Maharashtra Victim Compensation Scheme, 2014

⁵² Manipur Victim Compensation Scheme, 2011

⁵³ Mizoram Victims of Crime Compensation Scheme, 2011

⁵⁴ Nagaland Victim Compensation Scheme, 2012

	Rape of Minor	1,00,000/-	
	Rehabilitation	50,000/-	
Odisha ⁵⁵	No amount for the offence of rape	Nil	12 months
Punjab ⁵⁶	Rape	3,00,000/-	6 months
	Murder with rape	4,00,000/-	
Rajasthan ⁵⁷	Rape	2,00,000/-	1 year
	Rape of Minor	3,00,000/-	
	Rehabilitation	1,00,000/-	
Sikkim ⁵⁸	Rape	50,000/-	3 years
	Rehabilitation	30,000/-	
Tamil Nadu ⁵⁹	Rape	3,00,000/-	6 months
Telangana ⁶⁰	Rape	2,00,000/-	12 months
Tripura ⁶¹	Rape	50,000/- ⁶²	6 months
Uttar Pradesh ⁶³	Rape	2,00,000/-	6 months
Uttarakhand ⁶⁴	Rape	2,00,000/-	6 months
	Rape of Minor	2,50,000/-	
	Rehabilitation in case of rape victim	1,00,000/-	
West Bengal ⁶⁵	Rape	20,000/-	6 months
	Rape of Minor	30,000/-	
	Rehabilitation	20,000/-	
UT of Chandigarh ⁶⁶	Rape	3,00,000/-	3 years
	Rehabilitation	20,000/-	
UT of Dadra & Nagar Haveli ⁶⁷	Rape	3,00,000/-	3 years
	Rehabilitation	20,000/-	
UT of Daman & Diu ⁶⁸	Rape	3,00,000/-	3 years
	Rehabilitation	20,000/-	
UT of Puducherry ⁶⁹	Rape	3,00,000/-	3 years
	Rehabilitation	20,000/-	

⁵⁵Odisha Victim Compensation Scheme, 2012

⁵⁶Punjab Victim or their Dependents Compensation Scheme, 2011

⁵⁷Rajasthan Victim Compensation Scheme, 2011

⁵⁸Sikkim Compensation to Victims or his Dependents Schemes, 2011

⁵⁹Tamil Nadu Victim Compensation Scheme, 2013

⁶⁰Telangana Victim Compensation Scheme, 2015

⁶¹Tripura Victim Compensation Scheme, 2012

⁶²The compensation is Rs. 50,000/- of which Rs. 5,000/- shall be paid after preliminary verification of the complaint and the balance amount shall be sanctioned on filing of charge sheet.

⁶³Uttar Pradesh Victim Compensation Scheme, 2014

⁶⁴Uttarakhand Victim from Crime Assistance Scheme, 2013

⁶⁵West Bengal Victim Compensation Scheme, 2012

⁶⁶Union Territory of Chandigarh Victim Assistance Scheme, 2012

⁶⁷Union Territory of Dadra & Nagar Haveli Victim Assistance Scheme, 2012

⁶⁸Union Territory of Daman & Diu Victim Assistance Scheme, 2012

⁶⁹Puducherry Victim Assistance Scheme, 2012

The Union Territory of Lakshadweep⁷⁰ has also Victim Compensation Scheme in which the limitation period to claim compensation is three years but the offences included in schemes could not be traced. It is evident from the above table that-

- * The maximum amount of compensation for rape victims is ranging from Rupees Twenty Thousands to Rupees Ten Lakhs.
- * The maximum amount of compensation for rehabilitation of the victims is ranging from Rupees Twenty Thousands to Rupees One Lakh.
- * The limitation period to claim compensation is ranging from 180 days to Three years.

Thus, it may be said that the victim compensation schemes, though framed in consultation with Central Government, are not uniformly prepared. Maharashtra and Odisha are such States which do not provide any compensation for the victims of rape.

Supreme Court of India in *Suresh & another v. State of Haryana*⁷¹, observed that even though almost a period of five years has expired since the enactment of Section 357A, the award of compensation has not become a rule and interim compensation, which is very important, is not being granted by the Courts. The upper limit of compensation fixed by some of the States is arbitrarily low and is not in keeping with the object of the legislation. Further, the Court held that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case where compensation ought to be given and has not been given, irrespective of the application by the victim.

Further, in *Ankush Shivaji Gaikwad v. State of Maharashtra*⁷², Supreme Court held that while the award or refusal of compensation in a particular case may be within the Court's discretion, there exists a mandatory duty on the Court to apply its mind to the question in every criminal case. Application of mind to the question is best disclosed by recording reasons for awarding/refusing compensation.

Recommendation/Claim for Compensation- The compensation to the victim may be awarded, on recommendations of the trial court, by the District/State Legal Services Authority deciding the quantum of compensation to be awarded. But, if the offender is not traced or identified and the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation. When the State or the District Legal Services Authority receives recommendations or the application, after due enquiry, it has to award adequate compensation by completing the enquiry within two months.

Victim Compensation Fund- The Said Fund has been created by the all States and Union Territories in their schemes. Generally, it is mentioned in every schemes that the Fund will be

⁷⁰Lakshadweep Victim Assistance Scheme, 2012

⁷¹Criminal Appeal No. 420 of 2012 decided on 28 November, 2014

⁷²(2013) 6 SCC 770

credited by the separate budget of the concerned State Government every year. Every payment of compensation will be made from this Fund to the victims.

Mode of Payment- There is no uniformity in the mode of payment of compensation to the victims. The different States/UTs schemes have distinct mode of payment e.g.-

Arunachal Pradesh: All payments to the claimants or his/her dependents shall be invariably be made in Cheque/Draft to the Deputy Commissioner of the concerned district who shall disburse the same.

Assam: All amounts shall be paid through bank transfer only. Cash payment of any amount shall not be made from the Fund at any time.

Delhi: The amount of compensation so awarded shall be disbursed by the DSLSA by depositing the same in a Nationalized Bank or if the branch of a Nationalized Bank is not in existence, it shall be deposited in the branch of a scheduled commercial bank, in the joint or single name of the victim/dependent(s). Out of the amount so deposited, 75% (seventy-five percent) of the same shall be put in a fixed deposit for a minimum period of three years and the remaining 25% (twenty-five percent) shall be available for utilization and initial expenses by the victim/dependent(s), as the case may be.

Madhya Pradesh: The disbursement of compensation will be done through the Aadhar linked Bank account.

But, some States have not mentioned the mode of payment of compensation.

Central Victim Compensation Fund- Taking into account the disparity in State's Victim Compensation Schemes, the Ministry of Home Affairs, and Government of India issued the Central Victim Compensation Fund (CVCF) Scheme Guidelines which came into effect from August 21, 2015. The CVCF has been set up with an initial corpus of Rs. 200/- crores with following objectives-

- * To support and supplement the existing Victim Compensation Schemes notified by States/UT Administrations.

- * To reduce disparity in quantum of compensation amount notified by States/UTs for victims of similar crimes.

- *To encourage States/UTs to effectively implement the Victim Compensation Schemes notified by them under the provisions of section 357A of CrPC and continue financial support to victims of various crimes especially sexual offences including rape, acid attacks, crime against children, human trafficking etc.

The CVCF is expected to be supplemented by the public also. Under these Guidelines, the States/UTs are expected to notify their Victim Compensation Schemes in line with the provisions of section 357A CrPC having the minimum amount of compensation as mentioned in annexure. For the offence of rape, the minimum amount of compensation is Rs. 3, 00,000/- (Three Lakhs only) but if the victim is less than 14 years of age, the compensation shall be increased by 50% over the amount specified.

What type of variances have been seen above in different States/UTs schemes, these Guidelines attempt to end and maintain uniform norms to compensate the victims but the

requirement is that the States/UTs have to, after notifying their schemes as per section 357A CrPC, first pay the compensation to the eligible victims from their own Fund following the procedure and time frame provided in their respective scheme and thereafter can propose for reimbursement from the CVCF preferably once a year after completion of financial year.

The proposals sent by the States/UTs have to be approved by the Empowered Committee and accordingly the sanctioned amount will be transferred electronically to the Bank account of the State/UT Victim Compensation Fund. But, if the Committee does not accept the proposal, it may be rejected/returned. Here, it is significant to note that the State of Gujarat has issued Gujarat Victim Compensation Scheme, 2016 on January 2, 2016 while the CVCF Scheme Guidelines was issued on October 14, 2015 but Gujarat has not followed the norms contained in the CVCF Scheme Guidelines.

V Conclusion

The rape victims, being the most vulnerable group not only in their home rather out of the home too, lose their status what was before such offence without any fault and everyone doubts on the character and faithfulness of the victim. Hence, the proper rehabilitation of such victims, on the part of State, is must to bring confidence in criminal justice system and deliver justice to the victims. It is correct to state that the compensation neither can restore the dignity and confidence that the accused took away from the victim nor can erase the pain, trauma and grief suffered by the victims during and after the rape but it may play very vital role after committing of the offence.

But, it is matter of sorrow that different States prepared Victim Compensation Scheme for rape victims having different amount of compensation. Does it mean there are different consequences of rape only due to change of State? Undoubtedly, the answer is no. So, all the States/UTs must, in line with delivering justice to the rape victims, notify their Schemes having uniform amount of compensation as mentioned in the CVCF.

The CVCF also needs to be amended to incorporate the limitation period so that law may be certain. The Indian Judiciary has also played very crucial role to protect the interests of vulnerable groups and it is expected that the judiciary's role will not be limited in interpreting the law only rather from the aspect of a common person, judiciary has to see the justice so that any helpless person cannot be left on the mercy of God or civil society.